SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1968

No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,

Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

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SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	3
Questions Presented	3
Statement of the Case	5
How the Federal Question Is Presented	8
The Questions Are Substantial	10
Conclusion	16

INDEX TO APPENDIX

Opinion of the Court of Appeal	17
Opinion and Order for Judgment	27
Conclusions of Law and Judgment	41
Order Denying Rehearing	42
Order Denying Hearing by Supreme Court	43
Statutes of California, First Extraordinary Session, 1964, Ch. 1, p. 103 ("AB 9")	44
California Code of Civil Procedure, Secs. 875-880	49

TABLE OF AUTHORITIES CITED

Cases	Page
Blunt v. Brown, 225 F. Supp. 326	13
Bolling v. Sharpe, 347 U.S. 497	15
Clemons v. City of Los Angeles, 36 Cal. 2d 95, 222 P. 2d 439	7
Construction Laborers v. Curry, 371 U.S. 542	3
Cox v. E. I. DuPont de Nemours and Company, 269 F. Supp. 176	13
Dahnke-Walker Co. v. Bondurant, 257 U.S. 282	3
Dow v. Sunset Tel. & Tel. Co., 162 Cal. 136	5
Fiske v. Kansas, 274 U.S. 380	3
Glona v. American Guarantee Co., 391 U.S. 73	15
Gulf, Colorado & Santa Fe R'y. v. Ellis, 165 U.S. 150	14
Guy F. Atkinson Co. v. Consani, 223 Cal. App. 2d 342, 35 Cal. Rptr. 750	13
Hartford Co. v. Harrison, 301 U.S. 459	15
Holden v. James, 11 Mass. 396	10, 12
Levy v. Louisiana, 391 U.S. 69	4, 15
Loving v. Virginia, 388 U.S. 1	4
Martin v. United States, 162 F. Supp. 441	13
McLaughlin v. Florida, 379 U.S. 184	15
Monahan v. Dept. of Water & Power, 48 Cal. App. 2d 746, 120 P. 2d 730	8
Morey v. Doud, 354 U.S. 457	4, 10, 14, 15
Pope v. Atlantic Coast Line R. Co., 345 U.S. 379	3
Schneider v. Rusk, 377 U.S. 163	15
Sladovich v. County of Fresno, 158 Cal. App. 2d 230, 322 P. 2d 565	7

Page

Taylor & Co. v. Place, 4 R.I. 324 ..... 10, 12

United States v. Brown, 381 U.S. 437 ..... 10, 11

Wilson v. Transit Authority, 199 Cal. App. 2d 716, 19 Cal. Rptr. 59 8

Statutes

Assembly Bill 9 ..3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15

Sec. 1 ..... 6, 8

Sec. 3(a) 6, 8

Sec. 4(a) 6

Sec. 7 7

Sec. 9 7

Sec. 10 7

California Code of Civil Procedure, Sec. 875 6

California Code of Civil Procedure, Secs. 875-880 ..... 3, 5, 7, 13

California Code of Civil Procedure, Sec. 1060 .....2, 7

United States Code, Title 28, Sec. 1257(2) 2, 9

United States Constitution, Art. I, Sec. 10 .....4, 8

United States Constitution, Fourteenth Amendment 4, 8

Textbook

2 Cooley, Constitutional Limitations (8th ed., 1927), p. 809 11

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Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the court of appeal of the State of California, Second Appellate District, Division Three, reversing a judgment of the superior court which had held unconstitutional a California statute. In reversing that judgment, the court of appeal upheld the validity of the state statute as against challenge on the ground of its repugnancy to the Constitution of the United States. Appellant submits this statement to show that this Court has jurisdiction of the appeal and that substantial questions under the Federal Constitution are presented.

Opinions Below.

The opinion of the court of appeal is reported in Volume 262, Advance California Appellate Reports, at page 144, and in Volume 68, California Reporter, at page 512. The opinion of the superior court is unreported. Copies of the opinions of the court of appeal and of the superior court, together with the conclusions of law and the judgment of the superior court, are appended hereto.

Jurisdiction.

The jurisdiction of this Court is invoked on the following grounds:

1. In this proceeding appellees, the City of Los Angeles and its Department of Water and Power, sought a judicial declaration of the constitutionality of a newly enacted state statute, which created a special exception to the general law respecting contribution among tortfeasors. The declaratory relief action was authorized by section 1060 of the California Code of Civil Procedure pertaining to declaratory relief actions generally.

2. The judgment of the court of appeal was entered on May 13, 1968. That court denied rehearing on June 11, 1968 (Appx. p. 42). On July 10, 1968, the Supreme Court of California denied a hearing (Mr. Justice Mosk voting for a hearing) (Appx. p. 43). Notice of appeal was filed in the court of appeal on September 24, 1968.

3. Jurisdiction is conferred upon this Court by Title 28 of the United States Code, section 1257(2). The validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution

of the United States; the decision of the state court was in favor of its validity. With denial of a hearing by the California Supreme Court on July 10, 1968, the decision of the court of appeal stands as a final determination of the issue so far as the courts of the State of California are concerned.

4. The following cases sustain the appellate jurisdiction of this Court to review the judgment below:

Fiske v. Kansas, (1927) 274 U.S. 380, 385;

Dahnke-Walker Co. v. Bondurant, (1921) 257 U.S. 282, 290;

Construction Laborers v. Curry, (1963) 371 U.S. 542, 550-551;

Pope v. Atlantic Coast Line R. Co., (1953) 345 U.S. 379, 382.

Statutes Involved.

The state statute, the validity of which is involved, is Chapter 1 of the Statutes of the State of California, First Extraordinary Session, 1964 (1 Cal. Stats. Ex. Sess. 1964, c. 1, p. 103). It is set forth at pages 44-48 of the Appendix. Hereinafter (as in the courts below) the statute is referred to as AB [Assembly Bill] 9. AB 9 is limited by its terms to one single past event. The general law out of which AB 9 has carved its solitary exception is found in sections 875-880 of the California Code of Civil Procedure, which were enacted in 1957 and are set forth at pages 49-51 of the Appendix.

Questions Presented.

AB 9 is entitled "An Act relating to contribution among joint and several tortfeasors and declaring the urgency thereof, to take effect immediately," but its terms at once preclude any general application:

"Section 1. This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963."

The specific questions presented are:

1. Whether AB 9, by legislating a special exception to the general law so as to alter the rights and liabilities with respect to litigation arising from a single past occurrence, is repugnant to the equal protection clause of the Fourteenth Amendment, in that it creates an "arbitrary and invidious discrimination" (*Loving v. Virginia,* (1967) 388 U.S. 1, 10; *Levy v. Louisiana,* (1968) 391 U.S. 69, 70-71) and a "closed class" "not of a generic category" (*Morey v. Doud,* (1957) 354 U.S. 457, 464, 469).

2. Whether AB 9 denies to appellant the protection of due process of law guaranteed by the Fourteenth Amendment, in that, with respect to litigation arising from a single past occurrence expressly designated by the statute, it bestows special privileges on the City of Los Angeles and deprives appellant of substantial rights accorded by the general law.

3. Whether, by thus suspending, ex post facto, the general law of the state and determining from the asserted facts of a past occurrence what special rights and privileges shall be retroactively granted and immunities withdrawn, AB 9 is "trial by legislature," or legislative justice in the manner of a bill of attainder, in violation of Article I, section 10 of the United States Constitution and of the constitutional principle of separation of powers embodied in the due process clause of the Fourteenth Amendment.

Statement of the Case.

The Baldwin Hills Dam and Reservoir, situated in the City of Los Angeles, had been designed, constructed (in 1951) and maintained by appellees. On December 14, 1963, the reservoir collapsed, flooding the nearby area and allegedly causing the deaths of five persons and extensive property damage.

Two months thereafter, at the instance of the city and its Department of Water and Power (appellees herein) (Appx. pp. 27-28), the legislature enacted AB 9, making a specific and solitary exception to the general law of contribution among tortfeasors. This was to accommodate the city's claim that even if it were liable as designer, builder, owner and operator of the reservoir, the production of oil by appellant and other producers in the nearby Inglewood Oil Field may have caused subsidence which contributed to the failure of the reservoir.

In California, except as created by statute, there is no right of contribution among tortfeasors (*Dow v. Sunset Tel. & Tel. Co.*, (1912) 162 Cal. 136, 139-140, 121 Pac. 379, 380-381). In 1957 sections 875-880 of the Code of Civil Procedure were enacted to provide a right of contribution among those tortfeasors against whom a joint judgment had been rendered in a suit by the injured party, *i.e.*, as between defendants in a suit by the injured party, and then only after judgment holding such defendants liable as joint tortfeasors for the specific amount of damages awarded to the

plaintiff.[1] This is the general law which AB 9 changed, solely with respect to Baldwin Hills—December 14, 1963.

The significant provisions of AB 9 are:

Section 1:

> "This act is applicable only to injuries to person or property and wrongful deaths resulting from the failure of the Baldwin Hills Dam and Reservoir in the City of Los Angeles on December 14, 1963."

Section 3(a):

> "Where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them which shall arise when one tortfeasor has discharged by payment the common liability or has paid more than his pro rata share thereof, although judgment has not been rendered against all or any of them in an action on the tort."

Section 4(a):

> "The pro rata share of each tortfeasor shall be determined by dividing the entire common liability equally among all of them."

---

[1] "(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as herein provided.

* * * *

"(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof" (Code Civ. Proc., sec. 875; Appx. pp. 49-50).

Section 7 declared that:

> "* * * it appears to the Legislature that an actual controversy respecting the constitutionality of this act exists * * *"

and the section went on to authorize the institution of an action for a declaratory judgment as to AB 9's constitutionality before the payment of any claims. Appellees did not pursue this remedy, but proceeded under the existing general declaratory judgment statute.[2]

Section 9 provided:

> "If Section 1 of this act is held invalid, this entire act is invalid."

Section 10 declared that the act was an "urgency measure" necessary to mitigate the hardships suffered by the victims of the dam's failure and that:

> "The remedies provided by this act are necessary to cope with this situation and must be available immediately."

The California legislature had twice refused to enact general legislation permitting prejudgment contribution as now specially authorized solely for Baldwin Hills—December 14, 1963. The first occasion was in 1957 at the time of enactment of the general law, sections 875-880 of the Code of Civil Procedure. The second was in February, 1964, when AB 9 was initially proposed in the legislature. As first introduced in and passed by the State Assembly, AB 9 would have applied uniformly to all tortfeasors. The State Senate subsequently amended the Act, with the Assembly's concurrence, to include

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[2]An action for a declaration as to constitutionality was already authorized by section 1060 of the California Code of Civil Procedure. See *Clemons v. City of Los Angeles,* (1950) 36 Cal. 2d 95, 97, 222 P. 2d 439, 440; *Sladovich v. County of Fresno,* (1958) 158 Cal. App. 2d 230, 238, 322 P. 2d 565, 569.

the provision in section 1 which restricted AB 9 to the particular single past event of December 14, 1963 (Appt's. Petn. for Hrg. Cal. Supr. Ct., pp. 3-4). Thus, by the enactment of AB 9, California, for the first time and for only one past event and no other, authorized the initiation of an independent suit by a tortfeasor for contribution from another who had not been adjudged liable to the injured person.

With the privileges newly bestowed by AB 9 at hand, appellees negotiated settlements with the flood victims. Allegedly appellees and their insurance carriers paid in excess of $12,000,000. Then, claiming the right to sue for contribution by virtue of AB 9 and necessarily conceding that they have "become jointly and severally liable in tort" (AB 9, sec. 3(a)),[3] appellees instituted this action for a declaration of AB 9's constitutionality.

How the Federal Question Is Presented.

The sole relief sought by the complaint was a declaration of AB 9's constitutionality. In the superior court, appellant filed a general demurrer to the complaint and a memorandum of points and authorities in support thereof [Clk. Tr. pp. 16-32]. While appellant in the memorandum argued, inter alia, that the complaint failed to plead facts indicating the existence of a justiciable controversy, appellant spelled out the constitutional infirmities of AB 9, specifically including the asserted violations of Article I, section 10 and of the Fourteenth Amendment of the United States Constitu-

[3]Had they not claimed this status, the action would have been only a request for an advisory opinion, not authorized under California law. See *Wilson v. Transit Authority*, (1962) 199 Cal. App. 2d 716, 722, 19 Cal. Rptr. 59, 62-63; *Monahan v. Dept. of Water & Power*, (1941) 48 Cal. App. 2d 746, 751, 120 P. 2d 730, 732-733.

tion, and stated that it "asserts such invalidity on this demurrer for the purpose of raising the point at the earliest possible stage of the proceeding" [Clk. Tr. p. 25]. After argument and submission of the demurrer, the trial court, under date of August 5, 1965, issued this order:

> "Submission vacated.
>
> "It appears to the Court there is considerable doubt of the constitutionality of the statute. The matter is therefore continued to September 14, 1965 at 9:45 A.M. in Department 15 of this Court, for full argument and briefing on the point.
>
> "Counsel notified by mail."

Thereafter the validity of AB 9 under both the State and Federal constitutions was briefed and argued before the trial court. On December 5, 1965, the trial court issued its opinion and order for judgment, holding that "the law in question is prohibited special legislation and that no valid basis of classification was shown to exist" (Appx. p. 35). Appellees appealed to the court of appeal on the single issue of the constitutionality of the legislation.

Thus, the sole relief sought by the complaint was a declaration of AB 9's constitutionality, which was the only substantive issue decided by the trial court and the court of appeal. The latter court read the statute as making a classification of "Baldwin Hills tortfeasors" and determined that there had been no violation of equal protection or due process and no unconstitutional attempt by the legislature to exercise judicial powers (Appx. pp. 21-25). The decision of the court of appeal, upholding the constitutionality of AB 9, brings the case squarely within the provisions of United States Code, Title 28, section 1257(2).

The Questions Are Substantial.

The case is novel and of an importance to warrant plenary consideration by this Court. Its unprecedented character is evidenced by the difficulty in finding situations factually comparable. Any search for similar legislative action must range back to cases which arose more than a century ago, and in which the courts struck down legislative attempts to make special rules for particular, identifiable cases.[4]

If a state legislature can lawfully enact AB 9, it can permissibly prescribe a different rule for any other past occurrence which is followed by public clamor or which involves parties having sufficiently powerful political influence. In this respect AB 9 is trial by legislature, or legislative justice, an attempt to determine from the asserted facts of a past occurrence what relief should be made available retrospectively.

Such action plainly violates due process through legislative invasion of judicial prerogatives (cf. *United States v. Brown,* (1965) 381 U.S. 437, 442-444, 446). It is fundamental that the determination of liability for past events is a judicial function to be exercised in the light of the general laws in force at the time.

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[4] *Taylor & Co. v. Place,* (1856) 4 R.I. 324, invalidating legislation granting a new trial in a specific, named case for the avowed purpose of permitting certain of the parties to produce further evidence; *Holden v. James,* (1814) 11 Mass. 396, invalidating legislative suspension of the statute of limitations with respect to the claims of a named individual against a specified decedent's estate.

In this regard, this Court has emphasized:

> " 'Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.' *Louisville Gas Co. v. Coleman,* 277 U.S. 32, 37-38; *Hartford Co. v. Harrison,* 301 U.S. 459, 462" (*Morey v. Doud,* (1957) 354 U.S. 457, 464).

In the *Brown* case this Court said (381 U.S. 442):

> "The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature."

And (381 U.S. 446):

> "'It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments.' *Fletcher v. Peck*, 6 Cranch 87, 136."

To put it another way:

> "The legislature may suspend the operation of the general laws of the State; but when it does so the suspension must be general, and cannot be made for individual cases or for particular localities. * * * [E]very one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments" (2 Cooley, Constitutional Limitations (8th ed., 1927) 809).

The principles stated in the quotation above exactly fit the situation here. The operation of the general laws has been suspended for an individual case, which has been singled out "as one to be regulated by a dif-

ferent law from that which is applied in all similar cases."

That AB 9 subjects appellant to the "invidious discrimination" which the equal protection and due process clauses condemn cannot be doubted. Under the general law, appellant and others who might be the target of claims for contribution are immune from a judgment or order of contribution unless and until the victim of the tort brings an action against them and recovers judgment. This immunity the single-event legislation of AB 9 would wipe out as to appellant, while preserving it as to all others who might be involved in any type of accident, slight or catastrophic, with a single victim or hundreds—every conceivable tort situation, in fact, other than Baldwin Hills-December 14, 1963.

We have referred above (*supra,* p. 10, n. 4) to early cases in which legislatures attempted similarly to erase an immunity of parties to specific litigation; *i.e.,* the legislation purporting to suspend the statute of limitations with respect to the claims of a named individual against a specific decedent's estate in *Holden v. James,* (1814) 11 Mass. 396; and legislation granting a new trial in a specific, named case for the avowed purpose of permitting certain of the parties to produce further evidence in *Taylor & Co. v. Place,* (1856) 4 R.I. 324. Such bare-faced legislative discrimination would hardly be dreamed of, much less condoned, today; yet the immunity of appellant here under the general law, which AB 9 would take away, is no less substantial.[5]

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[5]These cases illustrate the speciousness of the assertion of the court below (Appx., pp. 24-25) that "AB 9 makes no determinations of fact against anyone nor does it adjudicate the rights or liabilities of any parties." The same is true of the legislation in *Holden v. James* and *Taylor & Co. v. Place, supra.* While in-

Conversely, as to the one accident, AB 9 gives special privileges to appellees and their insurance carriers by creating rights not available to tortfeasors liable for any other accident. Obviously a cause of action is conferred which is denied by the general law, with all of the practical advantages of control over the litigation. Under AB 9, appellees, rather than the victims, select the parties which they (the appellees) claim to be liable, and in this way may affect the amount of contribution from any other party subsequently found to be jointly or severally liable. Also, appellees alone might determine the extent of damages through the settlement they negotiate with each injured party.[6]

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herently invidious, neither the legislative grant of a new trial nor the suspension of the statute of limitations determined the rights or liabilities of any party, which would depend on the outcome of the projected further litigation. The California court of appeal seems to be saying that anything short of direct legislative compulsion of the outcome of a particular case is constitutionally inoffensive. Such is obviously not the law.

[6]That the special privileges accorded appellees by AB 9 are substantial is demonstrated by *Guy F. Atkinson Co. v. Consani*, (1963) 223 Cal. App. 2d 342, 345-346, 35 Cal. Rptr. 750, 752. In that case both Atkinson and Consani had been sued as joint tortfeasors. The former was found liable while the jury's verdict was in favor of the latter. After paying the judgment Atkinson attempted to appeal the exoneration of Consani, claiming prejudicial error in the instructions. The appeal was dismissed, the court holding that Atkinson was not an aggrieved party because under the general contribution law, sections 875-880 of the Code of Civil Procedure, no cause of action in favor of Atkinson arose until there was a judgment against Consani.

In contrast, in a proceeding for contribution under AB 9, appellees would have the right to appeal from a judgment exonerating appellant or any other defendant. Also in point here are cases holding that the right to contribution is an issue of substantive law (*Blunt v. Brown*, (S.D. Iowa 1963) 225 F. Supp. 326, 328; *Cox v. E. I. DuPont de Nemours and Company*, (D. S.C. 1967) 269 F. Supp. 176, 178; *Martin v. United States*, (E.D. Pa. 1958) 162 F. Supp. 441).

In addition, AB 9 expands the right of contribution accorded appellees to include several (*e.g.,* successive) as well as joint tortfeasors—clearly working another substantive change in the general law (which is confined to contribution between joint tortfeasors) by requiring equal contribution from several tortfeasors who may not be equally at fault.

Neither the number of persons injured at Baldwin Hills nor any complexity of issues of causation—the justification urged by the court below—can save AB 9 from the vice of arbitrary selection. The statute must stand or fall on the standard which the legislature defined. It marked no line of classification according to the number of claimants, or cases involving complex issues of causation, or even dam failures. As this Court said in *Morey v. Doud,* (1957) 354 U.S. 457:

> "If the exception is to be upheld, it must be on the basis on which it is cast—an exception of a particular business entity and not of a generic category" (p. 464).

Actually, of course, there was no classification, but rather the deliberate bestowal of benefits on appellees alone, with accompanying denial of due process and equal protection to appellant. The correct rule was stated by this Court long ago:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this" (*Gulf, Colorado & Santa Fe R'y. v. Ellis,* (1897) 165 U.S. 150, 159)—

cited many times with approval. See for example, *McLaughlin v. Florida,* (1964) 379 U.S. 184, 190; *Hartford Co. v. Harrison,* (1937) 301 U.S. 459, 462.

This Court has continually been vigilant to safeguard against arbitrary and discriminatory state legislation (*e.g., Morey v. Doud,* (1957) 354 U.S. 457; *Levy v. Louisiana,* (1968) 391 U.S. 68; and *Glona v. American Guarantee Co.,* (1968) 391 U.S. 73—all cited to the lower court but not mentioned in its opinion). It will be recalled that in *Levy* and *Glona* this Court invalidated Louisiana legislation which granted a remedy for wrongful death but specifically excepted as beneficiaries those persons whose relationship to the decedent was illegitimate. The Louisiana statute established at least the semblance of a "class" (all past, present and future illegitimates). The state statute held invalid in those cases would have approached the extreme restrictiveness of AB 9 if it had made an exception to the general law only as to illegitimate children conceived on December 14, 1963, in Baton Rouge.

Furthermore, it is clear that legislation which makes an unjustifiable discrimination also violates the constitutional requirement of due process of law (*Schneider v. Rusk,* (1964) 377 U.S. 163, 168; *Bolling v. Sharpe,* (1954) 347 U.S. 497, 499-500). The latter cases were also cited to the court below but are not referred to in its opinion.

Conclusion.

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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Dated: October, 1968.

(APPENDIX FOLLOWS)